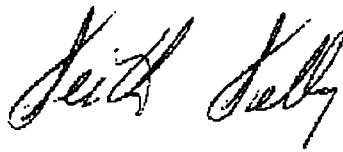


For: State and County Offices

Debt Settlement of FLP Debts

Approved by: Administrator



1 Overview

A

Background

Notice FC-123 was issued June 1, 1997, to provide guidance on processing debt settlements and monitoring judgment and charge off cases. Notice FC-130 was issued to provide clarification on debt settlement approval authority.

B

Purpose

This notice:

- obsoletes Notices FC-123 and FC-130
- consolidates information provided by Notices FC-123 and FC-130
- provides additional clarification on charge offs and on referring debt settlements which require Department of Justice (DOJ) approval. Direction is also provided on handling accounts which have been improperly debt settled by officials without proper approval authority.

C

Contact

If questions:

- County Offices shall contact the State Office
- State Office shall contact Bruce Mair or Kim Laris, LSPMD.

Disposal Date

June 1, 1999

5-29-98

Distribution

State Offices; State Offices relay to County Offices

Notice FC-190

2 Delegation of Authority to Approve Settlements Under RD Instruction 1956-B

A Canceling Debt Discharged in Bankruptcy

SED's:

- are authorized to approve cancellation of debts discharged under Chapter 11, 12, or 13 bankruptcy, according to RD Instruction 1956-B, section 1956.70(b)(3), regardless of the amount of the outstanding debt

Note: All liable parties must have received a bankruptcy discharge before SED uses this authority.

- may continue to exercise their authority, according to RD Instruction 1956-B, section 1956.84(a)(1)(ii), to approve cancellation of debts discharged in Chapter 7 bankruptcy according to RD Instruction 1956-B, section 1956.70(b)(3), regardless of the amount of the outstanding debt.
-

B Processing Settlements Approved by DOJ

While under its jurisdiction, the U.S. Attorney's Office or the Civil Division of DOJ will often negotiate settlement of an account. When settlement of an account has been negotiated and approved by DOJ, SED's may process a debt settlement under RD Instruction 1956-B without application, regardless of the size of the debt. The case files must be documented to reflect the DOJ decision. A copy of the DOJ approval will be attached to FmHA 1956-1.

C Cancellation or Compromise of Charged Off Debts

Changing a charge off of an account to a cancellation or compromise of the same account is not additional debt forgiveness. SED's are authorized to approve cancellation or compromise of debts previously charged off by SED, provided the account is not under the jurisdiction of the Department of Treasury or DOJ. Charge offs approved by the National Office must be referred to the National Office for cancellation.

D Redelegation of Authorities Not Authorized

SED's shall not redelegate the authorities described in subparagraphs A, B, and C.

3 Approving Debt Settlements for Borrowers Who Have Received Previous Debt Forgiveness

A Processing Debt Settlements of Accounts That Have Received Prior Debt Forgiveness

Based on the Federal Agriculture Improvement and Reform Act of 1996, borrowers are only entitled to one debt forgiveness under the Consolidated Farm and Rural Development Act (ConAct) direct loan program. There are no exceptions. However, even though a previous debt forgiveness has been received, debt settlements can be processed outside ConAct authorities. **Such approval is based on provisions in 31 U.S.C. 3711, and not the ConAct.**

SED's are authorized to approve:

- settlement of debt when the claim, exclusive of interest, penalties and administrative costs, is less than \$100,000. Follow RD Instruction 1956-B for guidance in accepting and processing debt settlement requests
- cancellation of debts discharged under Chapters 7, 11, 12, or 13 of the bankruptcy code, regardless of the amount of the debt

Note: All liable parties must have received a bankruptcy discharge before SED uses this authority.

- settlements **negotiated and approved** by DOJ.

If recommended by SED, settlement of debt of more than \$100,000, exclusive of interest, penalties and administrative costs, will be referred for approval to the Civil Division of DOJ, through the Regional OGC. In addition to information collected under RD Instruction 1956-B, a Claims Collection Litigation Report will be completed and forwarded to OGC.

Settlements not recommended to DOJ by SED will be rejected by SED.

Borrowers will not be provided appeal rights for settlements rejected under this authority. However, rights to a NAD Director review of the Agency's "appealability" decision will be provided.

Notice FC-190

4 COC Responsibilities

A

COC Action

COC will review and recommend or not recommend approval of all debt settlement cases, except the following:

- debt settlements negotiated and approved by DOJ
 - debt settlements referred to DOJ by the Agency for approval
 - cases in which the Agency debt has been discharged in bankruptcy
 - cases in which OGC determines the Agency is legally barred from seeking a deficiency.
-

5 Verifying Assets

A

Authorization to Verify Assets

To obtain complete and accurate information for making a full determination of a borrower's financial condition, see RD Instruction 1956-B, section 1956.57(b) and FmHA 410-7.

Continued on the next page

5 Verifying Assets (Continued)

**B
Obtaining
Borrower's
Authorization**

Current assets identified on FmHA 1956-1 shall be verified with those sources indicated by the borrower as holding, directing, or managing the investment.

The borrower will be requested to provide authorization for FSA to obtain confidential financial information necessary to verify the value of:

- savings accounts
- checking accounts
- certificates of deposit
- individual retirement accounts
- retirement and pension funds
- mutual funds
- stocks
- bonds
- accounts receivable.

A request for verification will be made of any entity that the FSA investigation indicates may be able to contribute information concerning the borrower's financial condition.

When authorization is provided, the FSA official responsible for assembling the application documentation shall contact the appropriate institution and obtain, at a minimum, the following information:

- type of account
- account number
- dollar value
- maturity date.

The request from FSA to the applicable institution shall contain the following certification:

"This certifies that the United States Department of Agriculture, acting through the Farm Service Agency, has complied with §111.3(h) of the "Right to Financial Privacy Act of 1978", in seeking information regarding the above-named borrower."

Continued on the next page

Notice FC-190

5 Verifying Assets (Continued)

C Settlement Without Signature

If the borrower refuses to provide authorization, is uncooperative, or has disappeared, and the debt settlement is proposed without a signature, the responsible FSA official shall attempt to verify financial information according to this paragraph.

If a borrower requests debt settlement, refuses to provide authorization, and investments and financial data cannot be verified, the application may be rejected for failure to provide complete financial information according to RD Instruction 1956-B, sections 1956.57(b) and 1956.84(d). Unless lack of assets can be verified, cancellation will not be approved.

Document the results of this effort in the borrower's case file.

D Exceptions

Investments do not require verification if any of the following apply:

- the debt being settled has been discharged in bankruptcy
- the account has been settled by DOJ
- FSA has been advised by OGC that the debt is uncollectible.

6 Judgment Debts

A Judgments

In States with judicial foreclosure, as soon as the foreclosure judgment is obtained, prepare FmHA 1962-20 and process 3B ADPS transaction according to RD Instruction 1955-A, section 1955.15(f)(4).

- Process foreclosure judgments to the account so that the interest rate on the account will start accruing interest at the Treasury Bill rate as of the date the judgment is filed, instead of the loan rate. This will provide servicing officials with the correct unpaid balance when determining bidding at the foreclosure sale.
- When the judgment is recorded, the borrower's account will no longer be reflected on RC 540. However, continue to use AGCREDIT to monitor the foreclosure in County Offices, and State Offices shall continue using the State Office Tracking System.

The foreclosure judgment shall remain on the account until after the foreclosure sale. If a deficiency judgment was not and will not be requested, the case should be considered for debt settlement upon receipt of the U.S. Attorney's letter that the case is closed. **If a deficiency judgment is obtained in any State, a 3B transaction will be processed to record the judgment amount. Any amount above the judgment amount will be canceled without application with a 3K debt settlement transaction according to subparagraph 2 B.**

Continued on the next page

6 Judgment Debts (Continued)

B

**Settlement of
Deficiency
Judgments**

Deficiency judgment debtors, whose judgment account has not been charged off, shall be reviewed on an annual basis according to RD Instruction 1962-A, section 1962.49(e)(3)(iii). From this review, the servicing official will determine whether any action should be referred to the U.S. Attorney or if the judgment debt could be charged off without release of liability under RD Instruction 1956-B, section 1956.75(a). Document the case file to show that the review was made and what attempts were made to resolve the account.

IF...	THEN...
the U.S. Attorney has not closed the case and the debtor wishes to make a compromise or adjustment offer	the offer and any related payment shall be sent to the U.S. Attorney for approval of the offer.
the U.S. Attorney has closed the case	<p>the judgment debt may be charged off according to RD Instruction 1956-B, section 1956.75(a) under either of the following conditions:</p> <ul style="list-style-type: none"> the debtor has disappeared and cannot be found without undue expense, there are no known assets or future debt paying ability, and all the security has been liquidated or disposed of 2 years has elapsed since any collections were made on the judgment, and the debtor has no equity in property on which the judgment is a lien or on which it can presently be made a lien.
the judgment is satisfied or released for less than full payment	the account should be canceled as a nonjudgment debt according to RD Instruction 1956-B, after obtaining acknowledgment from the U.S. Attorney indicating the judgment has been satisfied or released and the case closed. SED's shall process the debt settlement according to subparagraph 2 B.

Note: DOJ will not be requested to renew or revive a judgment unless there is a reason to believe that substantial assets have or may become subject thereto.

Continued on the next page

Notice FC-190

6 Judgment Debts (Continued)

C

County Office Tracking of Deficiency Judgments

When a judgment is recorded to the borrower's account, the borrower is no longer reflected on RC 540. No other Finance Office report is available to the County Office for tracking these cases. Therefore, it will be necessary for County Offices to track judgment cases in AGCREDIT according to the following table.

Step	Action												
1	<ul style="list-style-type: none"> "OTHER" to "JUDGMNT" when a deficiency judgment has been filed and any remaining debt has been debt settled. In supporting activities on the Judgment Screen, enter the date the judgment was filed and when it will expire, which is 20 years after date of judgment in Federal court. Change the planned due date to reflect the annual review date. <p>Note: The "JUDGMNT" code is not to be used for foreclosure judgments. Foreclosures are tracked separately from deficiency judgments in the normal tracking of liquidation.</p>												
2	<p>Immediately:</p> <ul style="list-style-type: none"> enter any outstanding deficiency judgments that are not being tracked in AGCREDIT by initializing them in ag90 under category "CAT310", "NP B 30 Days Past Due" "OTHER" to "JUDGMNT" and follow step 1. 												
3	From "JUDGMNT", "OTHER" to "CLDT302" to track the debt settlement if the judgment account is later charged off or the debt canceled if the judgment is released or satisfied.												
4	Take the following steps to run reports from AGCREDIT to obtain a list of judgment accounts.												
	<table> <tr> <th>Step</th><th>Action</th></tr> <tr> <td>1</td><td>On the Main Menu, select "G", "Report Options Menu".</td></tr> <tr> <td>2</td><td>On the Report Options Menu, select "I", "Print Report of Open Activities with Outcomes and Activities", select "y", and PRESS "Enter".</td></tr> <tr> <td>3</td><td>ENTER "JUDGMNT" on the activity code line, "Ctrl X", and select "Y" to exit.</td></tr> <tr> <td>4</td><td>Select "option D", "sort order by last name", and select "Option A" to indicate that sort selection is completed.</td></tr> <tr> <td>5</td><td>The report will prepare in the background.</td></tr> </table>	Step	Action	1	On the Main Menu, select "G", "Report Options Menu".	2	On the Report Options Menu, select "I", "Print Report of Open Activities with Outcomes and Activities", select "y", and PRESS "Enter".	3	ENTER "JUDGMNT" on the activity code line, "Ctrl X", and select "Y" to exit.	4	Select "option D", "sort order by last name", and select "Option A" to indicate that sort selection is completed.	5	The report will prepare in the background.
Step	Action												
1	On the Main Menu, select "G", "Report Options Menu".												
2	On the Report Options Menu, select "I", "Print Report of Open Activities with Outcomes and Activities", select "y", and PRESS "Enter".												
3	ENTER "JUDGMNT" on the activity code line, "Ctrl X", and select "Y" to exit.												
4	Select "option D", "sort order by last name", and select "Option A" to indicate that sort selection is completed.												
5	The report will prepare in the background.												

Continued on the next page

6 Judgment Debts (Continued)

D

**State Office
Tracking of
Judgments**

State Offices can obtain a list of judgment cases through AGCREDIT according to subparagraph C and through FOCUS. FOCUS Report JUDTYP10 was developed by the National Office. This report:

- can be copied from ID #AFN187 and modified by changing line 55 to reflect the appropriate State
- will not distinguish these accounts between foreclosure or deficiency judgments
- was revised to remove RHS court cost accounts.

Judgment accounts can be identified by the third and fourth digit of the fund code, as follows:

- 00 means judgments against the borrower
 - 08 means third-party judgments.
-

7 Chargeoff, Cancellation, and Collection-Only Cases

A

**Collection-Only
Classification**

The collection-only classification will no longer be used. Any borrowers classified as collection-only shall be reclassified to active and considered for debt settlement.

Continued on the next page

7 Chargeoff and Collection-Only Cases (Continued)

B

**When to Charge
Off Accounts**

Chargeoff is an accounting tool that FSA uses to record a loss on accounting records after all efforts to collect or debt settle the account are exhausted. The borrower remains liable for the debt even after the debt is charged off, or until the statute of limitations expires. Generally, there is a 6 year period from the date of acceleration for the U.S. Attorney to file a request for a deficiency judgment, and a 10 year period from the date of acceleration for FSA to collect by administrative offset. Charged off accounts will be referred to the Treasury Offset Program.

Note: Promissory Notes will be retained on all charged off accounts until the debt is canceled.

C

**When to Cancel
Accounts**

Generally, if the statute of limitations has expired, after receiving written concurrence from OGC that the claim is legally without merit or that the necessary proof of claim cannot be produced, the debt should be canceled without verification. See RD Instruction 1956-B, section 1956.70 for further details on cancellation of nonjudgment debts.

D

**Monitoring
Charged Off
Accounts**

County Offices shall monitor charged off accounts annually for offset until the expiration of the statute of limitations, which is 10 years from the date the Government's right to collect the debt for set off first accrued.

- This review shall be made during the same time as the review of judgment accounts and other delinquent and problem case accounts are reviewed, according to RD Instruction 1962-A, section 1962.49(e)(3)(iii).
- The nonjudgment charged off accounts should be considered for cancellation during each review.

The servicing official shall notify the State Office if assets or income from which collection can be made are discovered. Use Management Record System to monitor all judgment and nonjudgment chargeoff accounts. A Finance Office report is not available.

Continued on the next page

7 Chargeoff and Collection-Only Cases (Continued)

E

**Cancellation of
Charged Off
Accounts**

If cancellation of the charged off account is appropriate, the servicing official will seek the debtor's application if required under RD Instruction 1956-B, section 1956.70, and submit the debt settlement to the approval official for processing. After approval, the State Office shall route the 3K transaction to the Finance Office or send the Finance Office the debt settlement to process with a problem case report.

8 Unauthorized Approval of Debt Settlements

A

Approval Authority

Authority to approve debt settlements was established under RD Instruction 1956-B, section 1956.84(a)(1). Additional authority has been provided under subparagraphs 2 A and B. For accounts which received prior debt forgiveness, approval authority has been outlined under subparagraph 3 A.

B

**Referral to Correct
Approval Official**

If unauthorized approval of a debt settlement is identified, the settlement application with supporting documentation should be forwarded to the correct approval official for post-approval. If the debt settlement cannot be post-approved, the correct approval official will provide additional guidance on servicing the account.

9 Reissuance

A

**Restrictions on
Reissuance**

Any revisions or modifications to this notice that you wish to publish as a State notice must be submitted and approved by DAFLP before it is released for implementation by the State Office. The only exception to this requirement is when the revision or modification is necessary for compliance with State law.

B

Obsolete Notices

Notices FC-123 and FC-130 are obsolete.
